IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICITON

FIRST APPEAL NO. 646 OF 1995

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

Shri Trimbak Joma Thakur,]
deceased, through his legal representatives:-]

1) Dasharath Trimbak Thakur, age 39]
2) Kisan Trimbak Thakur, age 33]
3) Prabhakar Trimbak Thakur, age 31]
4) Bharati Bhaskar Patil, age 37]
5) Chandrabai Tukaram Patil, age 35]
6) Sulochana Mohan Patil, age 28]
7) Asha Vishwanath Patil, age 25]
8) Muktabai Trimbak Thakur, age 65]
9) Yeshwant Atmaram Thakur, age 25]
10) Ravindra Atmaram Thakur, age 23]
11) Vishwajeet Atmaram Thakur, age 21]
12) Santosh Atmaram Thakur, age 19]
13) Shirish Atmaram Thakur, age 17]
14) Sachin Atmaram Thakur, age 11]
15) Janabai Atmaram Thakur, age 42]...
Respondents

(Original Claimants)

WITH

CROSS OBJECTION (STAMP) NO. 27839 OF 1996

The State of Maharashtra]
through Special Land Acquisition Officer,]
Metro Centre No. II, Panvel, Dist. Raigad] ...Appellant
(Original Opponent)

VERSUS

Shri Trimbak Joma Thakur,]
since deceased, through his legal representatives]

1) Dasharath Trimbak Thakur, age 39]
2) Kisan Trimbak Thakur, age 33]
3) Prabhakar Trimbak Thakur, age 31]
4) Bharati Bhaskar Patil, age 37]
5) Chandrabai Tukaram Patil, age 35]
6) Sulochana Mohan Patil, age 28]
7) Asha Vishwanath Patil, age 25]
8) Muktabai Trimbak Thakur, age 65]
9) Yeshwant Atmaram Thakur, age 25]
10) Ravindra Atmaram Thakur, age 23]
11) Vishwajeet Atmaram Thakur, age 21]
12) Santosh Atmaram Thakur, age 19]
13) Shirish Atmaram Thakur, age 17]
14) Sachin Atmaram Thakur, age 11] ...Respondents

WITH

FIRST APPEAL NO. 781 OF 1995

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

Shri Trimbak Joma Thakur,]
deceased, through his legal representatives:-]

1) Dasharath Trimbak Thakur, age 39]
2) Kisan Trimbak Thakur, age 33]
3) Prabhakar Trimbak Thakur, age 31]
4) Bharati Bhaskar Patil, age 37]
5) Chandrabai Tukaram Patil, age 35]
6) Sulochana Mohan Patil, age 28]
7) Asha Vishwanath Patil, age 25]
8) Muktabai Trimbak Thakur, age 65]

9) Yeshwant Atmaram Thakur, age 25]
10) Ravindra Atmaram Thakur, age 23]
11) Vishwajeet Atmaram Thakur, age 21]
12) Santosh Atmaram Thakur, age 19]
13) Shirish Atmaram Thakur, age 17]
14) Sachin Atmaram Thakur, age 22]
15) Janabai Atmaram Thakur, age 42]...
Respondents

(Original Claimants)

WITH

CROSS OBJECTION (STAMP) NO. 31303 OF 1996

The State of Maharashtra]
through Special Land Acquisition Officer,]
Metro Centre No. II, Panvel, Dist. Raigad] ....Appellant

VERSUS

Shri Trimbak Joma Thakur,]
since deceased, through his legal representatives]

1) Dasharath Trimbak Thakur, age 39]
2) Kisan Trimbak Thakur, age 33]
3) Prabhakar Trimbak Thakur, age 31]
4) Bharati Bhaskar Patil, age 37]
5) Chandrabai Tukaram Patil, age 35]
6) Sulochana Mohan Patil, age 28]
7) Asha Vishwanath Patil, age 25]
8) Muktabai Trimbak Thakur, age 65]
9) Yeshwant Atmaram Thakur, age 25]
10) Ravindra Atmaram Thakur, age 23]
11) Vishwajeet Atmaram Thakur, age 21]
12) Santosh Atmaram Thakur, age 19]
13)Shirish Atmaram Thakur, age 17]
14) Sachin Atmaram Thakur, age 11]
15) Janabai Atmaram Thakur, Age 42] ...
Respondents

WITH

FIRST APPEAL NO. 782 OF 1995

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

Kundalik Tukaram Thakur, since deceased,]
through Legal Heirs:]

(1) Nirabai Kundalik @ Pundalik Thakur]
Resident of Roadpali, Taluka Panvel,]
District Raigad]
(2) Bebibai Ankush Bhoir]
Residing at Waklan, Taluka and Dist. Thane]
(3) Ratnabai Arun Keni]
Resident of Pethali, Taluka Panvel,]
Dist. Raigad]...Respondents
(Original Claimants)

WITH

CROSS OBJECTION (STAMP) NO. 27912 OF 1996

The State of Maharashtra]
through Special Land Acquisition Officer,]
Metro Centre No. II, Panvel, Dist. Raigad] ....Appellant

VERSUS

Kandlik Tukaram Thakur, since deceased,]
through Legal Heirs:]
(1)Nirabai Kundalik @ Pundalik Thakur]
Resident of Roadpali, Taluka Panvel,]
District Raigad]
(2) Bebibai Ankush Bhoir]
Residing at Waklan, Taluka and Dist. Thane]
(3) Ratnabai Arun Keni]
Resident of Pethali, Taluka Panvel,]
Dist. Raigad]...Respondents

(Original Claimants)

WITH

FIRST APPEAL NO. 783 OF 1995

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

Surendra Kumar Somany] ...Respondent
(Ori. Claimant)

WITH

CROSS OBJECTION (STAMP) NO. 32928 OF 1995

The State of Maharashtra]
through Special Land Acquisition Officer,]
Metro Centre No. II, Panvel, Dist. Raigad] ....Appellant

VERSUS

Surendra K. Somany]
C/o. A.K. Daruwala, 131, Bhusari Mohalla,]
Panvel 410 206] ...Respondent

WITH

FIRST APPEAL NO. 785 OF 1995

The State of Maharashtra]
[at the instance of]

Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

Ramchandra Balu Thakur, deceased through]
his legal representatives]
(1)Jeejabai Ramchandra Thakur, age 70]
(2)Kesarinath Ramchandra Thakur, age 52]
(3) Dhanubai Waman Madhavi, age 43]
(4) Motibai Eknath Patil, age 36]
(5) Bhagubai Krishna Tembhe, age 23] ...Respondents
(Ori. Claimants)

WITH

CROSS OBJECTION (STAMP) NO. 27864 OF 1996

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

Ramchandra Balu Thakur, deceased through]
his legal representatives]
(1) Jeejabai Ramchandra Thakur, age 70]
(2) Kesarinath Ramchandra Thakur, age 52]
(3) Dhanubai Waman Madhavi, age 43]
(4) Motibai Eknath Patil, age 36]
(5) Bhagubai Krishna Tembhe, age 23] ...Respondents

WITH

FIRST APPEAL NO. 786 OF 1995

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]

Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

Kundalik @ Pundalik Tukaram Thakur,]
since deceased, through Legal Heirs:]

(1)Nirabai Kundalik @ Pundalik Thakur]
Resident of Roadpali, Taluka Panvel,]
District Raigad]
(2) Bebibai Ankush Bhoir]
Residing at Waklan, Taluka and Dist. Thane]
(3) Ratnabai Arun Keni]
Resident of Pethali, Taluka Panvel,]
Dist. Raigad]...Respondents
(Original Claimants)

WITH

CROSS OBJECTION (STAMP) NO. 27918 OF 1996

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

Kundalik @ Pundalik Tukaram Thakur,]
since deceased, through Legal Heirs:]
(1)Nirabai Kundalik @ Pundalik Thakur]
Resident of Roadpali, Taluka Panvel,]
District Raigad]
(2) Bebibai Ankush Bhoir]
Residing at Waklan, Taluka and Dist. Thane]
(3) Ratnabai Arun Keni]
Resident of Pethali, Taluka Panvel,]
Dist. Raigad]...Respondents

WITH

FIRST APPEAL NO. 787 OF 1995

The State of Maharashtra]

[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

1. Dattatraya Kashinath Thakur]
(Deceased) through his legal representatives:]
1/1. Baliram Dattatraya Thakur, age 20]
1/2. Ashok Dattatraya Thakur, age 27]
1/3. Bharat Dattatraya Thakur, age 23]
1/4. Mai Rajaram Patil, age 32]
2. Vithal Kashinath Thakur]
3. Gopinath Kashinath Thakur]
4. Maruti Kashinath Thakur, since deceased]
by his heir & L.R.:]
Jagdish Maruti Thakur]
Resident of Panvel, Taluka Panvel,]
Dist. Raigad]
5. Kundalik @ Pundalik Tukaram Thakur,]
since deceased, through Legal Heirs:]
(1)Nirabai Kundalik @ Pundalik Thakur]
Resident of Roadpali, Taluka Panvel,]
District Raigad]
(2) Bebibai Ankush Bhoir]
Residing at Waklan, Taluka and Dist. Thane]
(3) Ratnabai Arun Keni]
Resident of Pethali, Taluka Panvel,]
Dist. Raigad]
6. Bhagwan Tukaram Thakur]
7. Balaram Tukaram Thakur]
8. Tulsabai Balaram Kesai]
9. Ramchandra Balu Thakur (Deceased)]
through legal representatives:]
9/1. Jeejabai Ramchandra Thakur]
9/2. Kesarinath Ramchandra Thakur]
9/3. Dhanubai Waman Madhavi]
9/4. Motibai Eknath Patil]
9/5. Bhagubai Krishna Tembhe]
10. Shukracharya Pandurang Thakur]
All of Rodpali, Tal. Panvel, Dist. Raigad]...Respondents

(Original Claimants)

WITH

CROSS OBJECTION (STAMP) NO. 27840 OF 1996

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

1. Dattatraya Kashinath Thakur]
(Deceased) through his legal representatives:]
1/1. Baliram Dattatraya Thakur, age 20]
1/2. Ashok Dattatraya Thakur, age 27]
1/3. Bharat Dattatraya Thakur, age 23]
1/4. Mai Rajaram Patil, age 32]
2. Vithal Kashinath Thakur]
3. Gopinath Kashinath Thakur]
4. Maruti Kashinath Thakur, since deceased]
by his heir & L.R.:]
Jagdish Maruti Thakur]
Resident of Panvel, Taluka Panvel,]
Dist. Raigad]
5. Kundalik @ Pundalik Tukaram Thakur,]
since deceased, through Legal Heirs:]
(A) Nirabai Kundalik @ Pundalik Thakur]
Resident of Rodpali, Taluka Panvel,]
District Raigad]
(B) Bebibai Ankush Bhoir]
Residing at Waklan, Taluka and Dist. Thane]
(C) Ratnabai Arun Keni]
Resident of Pethali, Taluka Panvel,]
Dist. Raigad]
6. Bhagwan Tukaram Thakur]
7. Balaram Tukaram Thakur]
8. Tulsabai Balaram Kesai]
9. Ramchandra Balu Thakur (Deceased)]
through legal representatives:]
9/1. Jeejabai Ramchandra Thakur]

9/2. Kesarinath Ramchandra Thakur]
9/3. Dhanubai Waman Madhavi]
9/4. Motibai Eknath Patil]
9/5. Bhagubai Krishna Tembhe]
10. Shukracharya Pandurang Thakur]
All of Rodpali, Tal. Panvel, Dist. Raigad] ...Respondents

WITH

FIRST APPEAL NO. 788 OF 1995

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

Shantaram Ambo Bhoir]
since deceased through his L.Rs.:]
(a) Devkubai Shantaram Bhoir, Age 65yrs., wife]
(b) Trimbak Shantaram Bhoir, age 42 yrs., son]
(c) Godabai Maya Joshi, Age 35 yrs.,]
Married daughter]
(d) Muktabai Hiraman Patil, Age 40 yrs.,]
Married daughter,]
All R/o. Padaghe, Post Navel, Tal. Panvel,]
Dist. Raigad.] ...Respondents
(Original Claimants)

WITH

CROSS OBJECTION (STAMP) NO. 27907 OF 1996

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

Shantaram Ambo Bhoir]

since deceased through his L.Rs.:]
(a) Devkubai Shantaram Bhoir, Age 65yrs., wife]
(b) Trimbak Shantaram Bhoir, age 42 yrs., son]
(c) Godabai Maya Joshi, Age 35 yrs.,]
Married daughter]
(d) Muktabai Hiraman Patil, Age 40 yrs.,]
Married daughter,]
All R/o. Padaghe, Post Navel, Tal. Panvel,]
Dist. Raigad.] ...
Respondents

WITH

FIRST APPEAL NO. 789 OF 1995

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

1. Atmaram Dhondu Mhatre, deceased,]
through his legal representatives:]
1/1. Shewantibai Atmaram Mhatre, Age 70]
1/2. Pundlik Atmaram Mhatre, Age 42]
1/3. Krishnabai Budhaji Mendadkar, Age 50]
1/4. Yamunabai Ganpat Mhatre, Age 48]
1/5. Janabai Atmaram Thakur, Age 47,]
since deceased by her heirs & L.Rs.:]
1/5(A) Yashwant Atmaram Thakur]
1/5(B) Ravindra Atmaram Thakur]
1/5(C) Vishwajeet Atmaram Thakur]
1/5(D) Santosh Atmaram Thakur]
1/5(E) Shirish Atmaram Thakur]
1/5(F) Sachin Atmaram Thakur]
All residing at Roadpali,Taluka Panvel,]
Dist. Raigad]

2. Kashinath Bama Bhoir, Age adult]
3. Narayan Bama Bhoir, Age adult]
All of Road Pali, Taluka Panvel, Dist. Raigad]...Respondents
(Original Claimants)

WITH

CROSS OBJECTION (STAMP) NO. 27838 OF 1996

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

1. Atmaram Dhondu Mhatre, deceased,]
through his legal representatives:]
1/1. Shewantibai Atmaram Mhatre, Age 70]
1/2. Pundlik Atmaram Mhatre, Age 42]
1/3. Krishnabai Budhaji Mendadkar, Age 50]
1/4. Yamunabai Ganpat Mhatre, Age 48]
1/5. Janabai Atmaram Thakur, Age 47,]
since deceased by her heirs & L.Rs.:]
1/5(A) Yashwant Atmaram Thakur]
1/5(B) Ravindra Atmaram Thakur]
1/5(C) Vishwajeet Atmaram Thakur]
1/5(D) Santosh Atmaram Thakur]
1/5(E) Shirish Atmaram Thakur]
1/5(F) Sachin Atmaram Thakur]
All residing at Road Pali,Taluka Panvel,]
Dist. Raigad]
2. Kashinath Bama Bhoir, Age adult]
3. Narayan Bama Bhoir, Age adult]
All of Road Pali, Taluka Panvel, Dist. Raigad] ...Respondents

WITH

FIRST APPEAL NO. 790 OF 1995

The State of Maharashtra]
[at the instance of]

Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

1. Shri Trimbak Joma Thakur,]
deceased, through his legal representatives:-]

1) Dasharath Trimbak Thakur, age 39]
2) Kisan Trimbak Thakur, age 33]
3) Prabhakar Trimbak Thakur, age 31]
4) Bharati Bhaskar Patil, age 37]
5) Chandrabai Tukaram Patil, age 35]
6) Sulochana Mohan Patil, age 28]
7) Asha Vishwanath Patil, age 25]
8) Muktabai Trimbak Thakur, age 65]
9) Yeshwant Atmaram Thakur, age 25]
10) Ravindra Atmaram Thakur, age 23]
11) Vishwajeet Atmaram Thakur, age 21]
12) Santosh Atmaram Thakur, age 19]
13) Shirish Atmaram Thakur, age 17]
14) Sachin Atmaram Thakur, age 11]
15) Janabai Atmaram Thakur, age 42]

2. Trimbak Namaji Bhoir]
All of Roadpali, Tal. Panvel, Dist. Raigad]...Respondents
(Original Claimants)

WITH

CROSS OBJECTION (STAMP) NO. 27910 OF 1996

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

1. Shri Trimbak Joma Thakur,]
deceased, through his legal representatives:-]

1) Dasharath Trimbak Thakur, age 39]
2) Kisan Trimbak Thakur, age 33]
3) Prabhakar Trimbak Thakur, age 31]
4) Bharati Bhaskar Patil, age 37]
5) Chandrabai Tukaram Patil, age 35]
6) Sulochana Mohan Patil, age 28]
7) Asha Vishwanath Patil, age 25]
8) Muktabai Trimbak Thakur, age 65]
9) Yeshwant Atmaram Thakur, age 25]
10) Ravindra Atmaram Thakur, age 23]
11)Vishwajeet Atmaram Thakur, age 21]
12) Santosh Atmaram Thakur, age 19]
13) Shirish Atmaram Thakur, age 17]
14) Sachin Atmaram Thakur, age 11]
15) Janabai Atmaram Thakur, age 42]

2. Trimbak Namaji Bhoir]
All of Roadpali, Tal. Panvel, Dist. Raigad] ...
Respondents

WITH

FIRST APPEAL NO. 808 OF 1995

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

1. Kundalik @ Pundalik Tukaram Thakur,]
since deceased, through Legal Heirs:]

1-A) Nirabai Kundalik @ Pundalik Thakur]
Resident of Rodpali, Taluka Panvel,]
District Raigad]
1-B) Bebibai Ankush Bhoir]
Residing at Waklan, Taluka and Dist. Thane]
1-C) Ratnabai Arun Keni]
Resident of Pethali, Taluka Panvel,]

Dist. Raigad]

2. Bhagwan Tukaram Thakur]
3. Balaram Tukaram Thakur]
4. Tulsabai Tukaram Thakur]
5. Dattatraya Kashinath Thakur]
since deceased, through legal representatives:]
5/1. Baliram Dattatraya Thakur]
5/2. Ashok Dattatraya Thakur]
5/3. Bharat Dattatraya Thakur]
5/4. Mai Rajaram Thakur]
6. Vithal Kashinath Thakur]
7. Gopinath Kashinath Thakur]
8. Maruti Kashinath Thakur,]
since deceased by his heir & L.R.:]
8-A) Jagdish Maruti Thakur]
Resident of Panvel, Taluka Panvel]
Dist. Raigad]
9. Ramchandra Balu Thakur]
since deceased, through legal representatives:]
9/1. Jeejabi Ramchandra Thakur]
9/2. Kesarinath Ramchandra Thakur]
9/3. Dhanubai Waman Madhavi]
9/4. Motibai Eknath Patil]
9/5. Bhagubai Krishna Tembhe]
All are R/o. Roadpalli, Tal. Panvel, Dist. Raigad] ...Respondents
(Ori. Claimants)

WITH

CROSS OBJECTION (STAMP) NO. 27859 OF 1996

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

1. Kundalik @ Pundalik Tukaram Thakur,]
since deceased, through Legal Heirs:]

1-A) Nirabai Kundalik @ Pundalik Thakur]
Resident of Rodpali, Taluka Panvel,]
District Raigad]
1-B) Bebibai Ankush Bhoir]
Residing at Waklan, Taluka and Dist. Thane]
1-C) Ratnabai Arun Keni]
Resident of Pethali, Taluka Panvel,]
Dist. Raigad]

2. Bhagwan Tukaram Thakur]
3. Balaram Tukaram Thakur]
4. Tulsabai Tukaram Keni]
5. Dattatraya Kashinath Thakur]
since deceased, through legal representatives:]
5/1. Baliram Dattatraya Thakur]
5/2. Ashok Dattatraya Thakur]
5/3. Bharat Dattatraya Thakur]
5/4. Mai Rajaram Thakur]
6. Vithal Kashinath Thakur]
7. Gopinath Kashinath Thakur]
8. Maruti Kashinath Thakur,]
since deceased by his heir & L.R.:]
8-A) Jagdish Maruti Thakur]
Resident of Panvel, Taluka Panvel]
Dist. Raigad]
9. Ramchandra Balu Thakur]
since deceased, through legal representatives:]
9/1. Jeejabi Ramchandra Thakur]
9/2. Kesarinath Ramchandra Thakur]
9/3. Dhanubai Waman Madhavi]
9/4. Motibai Eknath Patil]
9/5. Bhagubai Krishna Tembhe]
All are R/o. Roadpalli, Tal. Panvel, Dist. Raigad] ...Respondents

WITH

FIRST APPEAL NO. 809 OF 1995

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]

Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

1. Shri Trimbak Joma Thakur,]
deceased, through his legal representatives:-]

1) Dasharath Trimbak Thakur, age 39]
2) Kisan Trimbak Thakur, age 33]
3) Prabhakar Trimbak Thakur, age 31]
4) Bharati Bhaskar Patil, age 37]
5) Chandrabai Tukaram Patil, age 35]
6) Sulochana Mohan Patil, age 28]
7) Asha Vishwanath Patil, age 25]
8) Muktabai Trimbak Thakur, age 65]
9) Yeshwant Atmaram Thakur, age 25]
10)Ravindra Atmaram Thakur, age 23]
11) Vishwajeet Atmaram Thakur, age 21]
12) Santosh Atmaram Thakur, age 19]
13) Shirish Atmaram Thakur, age 17]
14) Sachin Atmaram Thakur, age 11]
15) Janabai Atmaram Thakur, age 42]

2. Anant Narayan Thakur]
All of Roadpali, Tal. Panvel, Dist. Raigad] ...
Respondents

WITH

CROSS OBJECTION (STAMP) NO. 27916 OF 1996

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

1. Shri Trimbak Joma Thakur,]
deceased, through his legal representatives:-]

1) Dasharath Trimbak Thakur, age 39]

2) Kisan Trimbak Thakur, age 33]
3) Prabhakar Trimbak Thakur, age 31]
4) Bharati Bhaskar Patil, age 37]
5) Chandrabai Tukaram Patil, age 35]
6) Sulochana Mohan Patil, age 28]
7) Asha Vishwanath Patil, age 25]
8) Muktabai Trimbak Thakur, age 65]
9) Yeshwant Atmaram Thakur, age 25]
10) Ravindra Atmaram Thakur, age 23]
11) Vishwajeet Atmaram Thakur, age 21]
12) Santosh Atmaram Thakur, age 19]
13) Shirish Atmaram Thakur, age 17]
14) Sachin Atmaram Thakur, age 11]
15) Janabai Atmaram Thakur, age 42]

2. Anant Narayan Thakur]
All of Roadpali, Tal. Panvel, Dist. Raigad] ...
Respondents

WITH

FIRST APPEAL NO. 810 OF 1995

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

1. Ramchandra Balu Thakur, deceased through]
his legal representatives:]
(1) Jeejabai Ramchandra Thakur, age 70]
(2) Kesarinath Ramchandra Thakur, age 52]
(3) Dhanubai Waman Madhavi, age 43]
(4) Motibai Eknath Patil, age 36]
(5) Bhagubai Krishna Tembhe, age 23]

2. Shukrucharya Pandurang Thakur] ...Respondents
(Ori. Claimants)

WITH

CROSS OBJECTION (STAMP) NO. 27842 OF 1996

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

1. Ramchandra Balu Thakur, deceased through]
his legal representatives:]
(1) Jeejabai Ramchandra Thakur, age 70]
(2) Kesarinath Ramchandra Thakur, age 52]
(3) Dhanubai Waman Madhavi, age 43]
(4) Motibai Eknath Patil, age 36]
(5) Bhagubai Krishna Tembhe, age 23]

2. Shukrucharya Pandurang Thakur] ...Respondents

WITH

FIRST APPEAL NO. 811 OF 1995

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

Gauraya Narayan Gharat,]
age 55, r/o. Roadpali, Tal. Panvel, Dist. Raigad] ...Respondent
(Ori. Claimant)

WITH

CROSS OBJECTION (STAMP) NO. 27913 OF 1996

The State of Maharashtra]
[at the instance of]

Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

Gauraya Narayan Gharat,]
age 55, r/o. Roadpali, Tal. Panvel, Dist. Raigad] ...Respondent

WITH

FIRST APPEAL NO. 812 OF 1995

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

Prabhakar Bhiwa Patil]
age 44, r/o. Roadpali, Tal. Panvel, Dist. Raigad] ...Respondent
(Ori. Claimant)

WITH

CROSS OBJECTION (STAMP) NO. 18882 OF 2002

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

Prabhakar Bhiwa Patil]
age 44, r/o. Roadpali, Tal. Panvel, Dist. Raigad] ...Respondent

WITH

FIRST APPEAL NO. 813 OF 1995

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

Shri Trimbak Joma Thakur,]

deceased, through his legal representatives:-]

1) Dasharath Trimbak Thakur, age 39]
2) Kisan Trimbak Thakur, age 33]
3) Prabhakar Trimbak Thakur, age 31]
4) Bharati Bhaskar Patil, age 37]
5) Chandrabai Tukaram Patil, age 35]
6) Sulochana Mohan Patil, age 28]
7) Asha Vishwanath Patil, age 25]
8) Muktabai Trimbak Thakur, age 65]
9) Yeshwant Atmaram Thakur, age 25]
10) Ravindra Atmaram Thakur, age 23]
11) Vishwajeet Atmaram Thakur, age 21]
12)Santosh Atmaram Thakur, age 19]
13) Shirish Atmaram Thakur, age 17]
14) Sachin Atmaram Thakur, age 11]
15) Janabai Atmaram Thakur, age 42]...
Respondents

(Original Claimants)

WITH

CROSS OBJECTION (STAMP) NO. 27854 OF 1996

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

Shri Trimbak Joma Thakur,]
deceased, through his legal representatives:-]

1) Dasharath Trimbak Thakur, age 39]
2) Kisan Trimbak Thakur, age 33]
3) Prabhakar Trimbak Thakur, age 31]
4) Bharati Bhaskar Patil, age 37]
5) Chandrabai Tukaram Patil, age 35]
6) Sulochana Mohan Patil, age 28]
7) Asha Vishwanath Patil, age 25]
8) Muktabai Trimbak Thakur, age 65]

9) Yeshwant Atmaram Thakur, age 25]
10) Ravindra Atmaram Thakur, age 23]
11) Vishwajeet Atmaram Thakur, age 21]
12) Santosh Atmaram Thakur, age 19]
13) Shirish Atmaram Thakur, age 17]
14) Sachin Atmaram Thakur, age 11]
15) Janabai Atmaram Thakur, age 42] ...
Respondents

WITH

FIRST APPEAL NO. 814 OF 1995

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

Kandalik Tukaram Thakur, since deceased,]
through Legal Heirs:]

(1) Nirabai Kundalik @ Pundalik Thakur]
Resident of Rodpali, Taluka Panvel,]
District Raigad]
(2) Bebibai Ankush Bhoir]
Residing at Waklan, Taluka and Dist. Thane]
(3) Ratnabai Arun Keni]
Resident of Pethali, Taluka Panvel,]
Dist. Raigad]...Respondents
(Original Claimants)

WITH

CROSS OBJECTION (STAMP) NO. 27865 OF 1996

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

Kandalik Tukaram Thakur, since deceased,]
through Legal Heirs:]

(1)Nirabai Kundalik @ Pundalik Thakur]
Resident of Rodpali, Taluka Panvel,]
District Raigad]
(2) Bebibai Ankush Bhoir]
Residing at Waklan, Taluka and Dist. Thane]
(3) Ratnabai Arun Keni]
Resident of Pethali, Taluka Panvel,]
Dist. Raigad] ...Respondents

WITH

FIRST APPEAL NO. 815 OF 1995

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

Mahadev Shema Thakur]
age 51, r/o. Roadpali, Tal. Panvel, Dist. Raigad] ...Respondent
(Ori. Claimant)

WITH

CROSS OBJECTION (STAMP) NO. 31301 OF 1996

The State of Maharashtra]
[at the instance of]

Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

Mahadev Shema Thakur]
age 51, r/o. Roadpali, Tal. Panvel, Dist. Raigad] ...Respondent

WITH

FIRST APPEAL NO. 838 OF 1995

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

1. Kashinath Bama Bhoir]
2. Narayan Bama Bhoir]
Both residents of Roadpali, Taluka Panvel,]
Dist. Raigad] ...
Respondents

(Ori. Claimants)

WITH

CROSS OBJECTION (STAMP) NO. 27853 OF 1996

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

1. Kashinath Bama Bhoir]
2. Narayan Bama Bhoir]
Both residents of Roadpali, Taluka Panvel,]
Dist. Raigad] ...
Respondents

WITH

FIRST APPEAL NO. 847 OF 1995

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Original Opponent)

VERSUS

1. Kundalik Tukaram Thakur, since deceased,]
through Legal Heirs:]

(A) Nirabai Kundalik @ Pundalik Thakur]
Resident of Rodpali, Taluka Panvel,]
District Raigad]
(B) Bebibai Ankush Bhoir]
Residing at Waklan, Taluka and Dist. Thane]
(C) Ratnabai Arun Keni]
Resident of Pethali, Taluka Panvel,]
Dist. Raigad]

2. Bhagwan Tukaram Thakur]
3. Balaram Tukaram Thakur]
4. Tulsabai Balaram Thakur]...Respondents
(Original Claimants)

WITH

CROSS OBJECTION (STAMP) NO. 27874 OF 1996

The State of Maharashtra]
[at the instance of]
Special Land Acquisition Officer,]
Metro Centre No. II, Panvel]] ... Appellant
(Ori. Opponent)

VERSUS

1. Kundalik Tukaram Thakur, since deceased,]
through Legal Heirs:]

(A) Nirabai Kundalik @ Pundalik Thakur]

Resident of Rodpali, Taluka Panvel,]
District Raigad]
(B) Bebibai Ankush Bhoir]
Residing at Waklan, Taluka and Dist. Thane]
(C) Ratnabai Arun Keni]
Resident of Pethali, Taluka Panvel,]
Dist. Raigad]

2.Bhagwan Tukaram Thakur]
3.Balaram Tukaram Thakur]
4.Tulsabai Balaram Thakur] ...Respondents

IN THE ABOVE MATTERS, EXCEPT FIRST APPEAL NO. 783 OF 1995 WITH CROSS OBJECTION (STAMP) NO. 32928 OF 1995:

Mr. A.R. Patil, Assistant Government Pleader, for the Appellants

Mr. Uday Lalit, Senior Advocate, instructed by Mr. S.S. Kulkarni for the Respondents.

IN FIRST APPEAL NO. 783 OF 1995 WITH
CROSS OBJECTION (STAMP) NO. 32928 OF 1995:

Mr. A.R. Patil, Assistant Government Pleader, for the Appellants

Mr P.S. Dani for the Respondent.

CORAM: SWATANTER KUMAR, C.J., &
S.C. DHARMADHIKARI, J.
Judgment reserved on: May 3, 2007
Judgment pronounced on: June 21, 2007_

JUDGMENT (Per Swatanter Kumar, C.J.):-

1. In furtherance to the Notification dated 24th September, 1986, issued under Section 4 of the Land Acquisition Act, 1894

(hereinafter referred to as "the Act"), the lands belonging to the Claimants were subjected to compulsory acquisition by the Special Land Acquisition Officer. The lands were part of the Revenue Estate of Village Roadpali, Taluka Panvel, District Raigad, admeasuring about 8040 square metres and forming part of Gats No. 118/0, 128/0 and 170/0. These lands were acquired for a public purpose, viz., for completion of the project for New Bombay in terms of the Notification issued by the Government. The Special Land Acquisition Officer, vide his Award made under Section 11 of the Act in year 1989, awarded to the Claimants compensation for acquisition of their lands at the rate of Rs.200/- to Rs.230/- per square metre. Dissatisfied by the awarded compensation, the land-owners preferred References under Section 18 of the Act. All the 22 References were dealt with and decided together by the learned District Judge, Raigad. Vide judgment dated 23rd December, 1993, the Reference Court granted the following reliefs to the Claimants:-

> "The Opponent shall pay to the Claimants Rs.16,88,440/- by way of market value plus Rs.5,06,520/- by way of solatium at 30% plus Rs.5,45,098.78 ps. as additional amount payable on the market value under Sec. 23(1A) of the Land Acquisition Act, in all Rs.27,40,018.78 awarded and paid to the Claimants

> as per the Award of the Opponent, that is to say, that the Opponent shall pay to the claimants Rs.26,68,819.45 ps. additionally together with interest at 9% per annum for the first year from the date of taking possession and thereafter at the rate of 15% per annum till the date of payment on the said amount and proportionate costs of this reference. "

The State Government is aggrieved by the judgment and preferred the First Appeals praying for modification of the judgment and claiming that the Award of the Special Land Acquisition Officer should be restored and the learned Reference Court ought not to have enhanced the compensation payable to the Claimants, while the Claimants felt that they were entitled to the grant of higher rate of compensation for their lands and thus, they preferred the cross-objections against the said judgment, praying for enhancing the compensation awarded to them by the learned Reference Court. Thus, the above 40 appeals and cross-objections arise from one and the same judgment and would necessarily have to be disposed of by a common judgment. First Appeal No. 646 of 1995 was taken up as the lead case, and thus, we would refer to the facts in that appeal.

2. The lands belonging to the Claimants were acquired for a purpose - to relieve congestion existing in Bombay proper in respect of industrial, commercial and residential purposes, and to establish a self-sufficient township, popularly known as "the New Bombay Project". The Government had issued Notification for acquiring the lands. This Notification, as already noticed, was issued in the year 1986. It may be noticed here that earlier a Notification was issued in the year 1970 under Section 4 of the Act; but the lands were not acquired. The provisions of the Act were amended in the year 1984. Resultantly, the Notification issued under Section 4 lapsed, rendering the land acquisition proceedings initiated earlier ineffective and whereafter a fresh Notification under Section 4 was issued on 24th September, 1986, resulting in the present proceedings.

3. Before the learned Reference Court, parties led documentary and oral evidence. The Claimants examined experts, as well as placed on record and proved lease-deeds, allotment letters, etc., and on the strength of the expert evidence, had prayed for further enhancement. On behalf of the State Government, a plea was taken that the claim of the Claimants is exorbitant, unprecedented

and based on instances which are neither comparable, nor have a bearing on the matter in controversy. Keeping in mind the pleadings of the parties, and the pleas taken by them, the learned Reference Court framed the following three issues:-

" Issues

1) Whether the Claimants prove that the compensation amount granted by the Opponent is inadequate, improper and not as per the sale statistics in view of the situation, location and N.A. potentiality of the acquired lands?

2) Whether the Claimants are entitled to get enhancement in compensation amount? If yes, what quantum?

3) What order and award? "

The issues were answered by the Reference Court primarily in favour of the Claimants, and compensation awarded to them was enhanced, as noticed above.

4. In order to appropriately examine the merit of the contentions raised before us in the present appeals, it will be useful to refer to certain relevant reasoning given by the learned Reference Court while enhancing the compensation:-

"13. ... I must note again that the market value of the land cannot be determined by the method of comparison of other similar sale transaction because there was no sale transaction of the land in the village itself due to the fact that the lands were notified for acquisition since 1970. However, that does not mean that for such reason, the Opponent was justified in fixing the fair market rate of the land on the basis of capitalization of income obtained from the land. The approach of the Opponent for deciding the market value is based upon income capitalization of agri. income by appropriate rate of interest. However, this method is generally inadequate for two reasons; viz. i) the owner may not have put his property to its best use or to most lucrative manner and ii) the method of annual crops value should be resorted to only when no other alternative method is available. It is so submitted in the case of *Raghuband Narayan Singh v. State of Uttar Pradesh* (A.I.R. 1967 S.C. 456). Therefore, especially when the lands were frozen since 1970, the method used by the Opponent for valuation of the property is not only defective, but illegal and thus cannot be approved at all. In view of this position, we have to seek out other methods to fix the fair market value of the property. In this regard, the expert valuer Shri Jeewan Kulkarni has come with his expert opinion, supported by extensive documents on record, concluding that in view of the relevant sale instances and Court awards, he has given his opinion that the market value of the land was at the rate of Rs.500/- psm as on the date of the Notification *i.e.* 24th September, 1986.

14. In fact, considering all material aspects which have surfaced by the evidence on record in this case, it is to be noted that the issue of fixing a fair market value of the said land would have direct bearing on three aspects, *viz.* 1) the land was converted for industrial purpose or was about to be converted for such purpose; 2) the land is close to National High way and railway and 3) all the urban infrastructural facilities were available. In this regard sale or lease instances effected by the Cidco or MIDC to various parties are to be taken as sale instances while deciding the market value of the acquired land, as there are no private sale deeds due to mass acquisition. In this regard four such sale instances are

brought on record supported by the documents by the Claimant, *viz.* commercial purpose, on 16th October, 1984. 2) MIDC, a Corporation constituted under Maharashtra Industrial Development Act, 1961, entered into lease agreement with M/s. Dyna Tech Engineers on 5th October, 1984 under which the Corporation gave on lease down a plot No. W-209(B) from an Industrial Estate known as Taloja Industrial Estate. The corporation has acquired this land in 1965 and thereabout and the plot was leased out for 95 years and from the contents of the document it is clear that the rate realised in the said lease works out to Rs.321/- psm as on 1st October, 1984; 3) The Cidco has leased out a plot admeasuring 2250-25 to Smt.Anusaya R. Padir for the premium of Rs.5,40,000/- from village Kalamboli. The lease was for the period of 60 years with effect from 17th January, 1985. Details of the said document works out to Rs.345-87 ps. psm; 4) Also the Cidco has offered plot No. 5 admeasuring 1466.384 sm to Shakti Construction Co. at Vashi at the premium rate of Rs.2727/- psm for 60 years. Applying similar analogy as above, the freehold market value of the freehold property works out to Rs.2775-75 psm.

19....distance from steel market should be the guiding factor because the land in question is basically for the Warehousing and Wholesale Steel Market purpose, as apparent from the evidence on record. Said distance of various lands from Steel Market as also similarly reflected distance from National High Way No. 4 as well as other industrial area in the vicinity, the nearest land from the Steel Market is the land abutting to it which is involved in LAR No. 138/90. Thereafter remaining lands are in proximity from the distance of 160 mts to the distance of 640 mts. Therefore, I have categorised all the lands involved in the said 22 references in four categories *i.e.* the lands at a distance of about 50 mts or more from the steel market would have fair market rate at the rate of Rs.200/- psm; the land which is located at the distances between 300 and 500 mts from the said Steel Market would fetch fair market value at the rate of Rs.205/- psm and the land located at the distance of 100 mts to 300 mts would fetch the market value of Rs.210/- psm. As noted earlier, the land involved in LAR No. 138 of

> 1990 is abutting to the Steel Market and is also closer to two industrial estates than the lands involved in the other references. Moreover, the evidence has clearly established that the land was not only having great N.A. potentiality even since prior to 1970, when in fact, such conversion into N.A. was allowed at that time itself. Therefore, I fix the market value of the land in LAR No. 138 of 1990 at Rs. 230/- psm. The land involved in this particular reference is at a distance of 160 metres from the steel market and hence the claimant is entitled to get market value at the rate of Rs.210/- in this particular reference..."

5. The above reasoning and findings of the learned Reference Court have been challenged on behalf of the State on the ground that there was no admissible and relevant evidence which, in law, would form the basis for awarding enhanced compensation. The instances of lands referred to in the judgment relate to different villages, and these were neither relevant, nor comparable, sale instances. No evidence was led by the Claimants to show similarity with regard to the acquired lands to the lands of which instances were relied upon. According to the State, in fact, there are no similar instances. They are merely lease-deeds and cannot be equated to sale-deeds in terms of evidentiary value or law. The Claimants having failed to discharge the onus placed upon them, the prayer for enhancement of compensation should have been declined by the learned Reference Court. The

judgment under appeal, thus, according to the State, is liable to be set aside. The Claimants have advanced the arguments that the development of the New Bombay area started in the year 1970 when the lands were acquired for that purpose for the first time. As per the Development Plan prepared by the City Industrial Development Corporation (CIDCO), the original purpose was residential; but in terms of the Notification issued under Section 4 of the Act, the purpose was stated to be warehousing, etc. The lands had potential as on the date of acquisition. No sale instances could be proved on record despite exercise of due diligence by the Claimants, inasmuch as there were no sale instances right from the year 1970 to 1976 because of the issuance of the Notification under Section 4 of the Act. On the basis of the expert evidence of S. Bahuleyan and S.V. Surve, and various documentary evidence, including the lease-deeds, as well as the documents executed by CIDCO in favour of the lessees, the Claimants are not entitled to claim enhancement of compensation and thus, enhancement of compensation at the rate of Rs.2000/- - 2200/- per square yard was declined.

6. As is evident from the afore-referred discussion in the judgment under appeal, the Court noticed that the lands were converted for industrial purpose or were to be converted for that purpose, which were close to National Highway and railway line and the urban infrastructural facilities were available. It is also noticed that CIDCO sold an under-developed piece of land at Kalamboli Village at a premium of Rs.1873.28 per square metre by way of 60 years of lease for the purpose of Weigh Bridge *i.e.* commercial purpose. The Corporation constituted under the Maharashtra Industrial Development Act, 1961 had also acquired lands in the year 1965 and they were developed and given on lease for a period of 95 years. The rate, according to the transfer-deed of this transaction, worked out to Rs.321/- per square metre as on 1st October, 1984 and in another transfer of leasehold rights for a period of 60 years as on 17th January, 1985, the rate worked out to Rs.345.87, while another plot, being Plot No. 5, admeasuring 1466.384 square metres, which was leasehold rights for 60 years, was sold at the rate of Rs.2775.75 per square metre. These transactions indicate that during the year 1994-95, at different rates, the leasehold rights in the lands in question or in the surrounding villages of Kalamboli and Taloja Industrial Estate

were given to the parties; and treating this as the basis, the learned Reference Court granted market value at the rate of Rs.200/- - 230/- per square metre.

7. It is an undisputed case that there are no sale instances vide which the freehold rights have been transferred between the private parties and for that matter, even between the State, its Corporations, on the one hand, and private individuals or Companies, on the other. The learned counsel appearing for the State, as already noticed, had argued that the Claimants have failed to produce some record of sale instances, and they have failed to discharge the onus placed upon them for determination of a fair market value of the land at the time of acquisition; as such their claim should be dismissed. This argument appears to be somewhat strange, but it is examined in its proper perspective, and has to be noticed only to be rejected. It is a conceded case before us that the lands for the first time were acquired in the year 1970 and the acquisition, of course, was permitted to lapse and fresh Notification was issued in the year 1986. In other words, the lands all throughout this long period, remained the subject-matter of Notification under Section 4 of the Act, thus necessarily

debarring transfer of lands. The Claimants cannot be blamed for not producing on record the sale instances for the relevant period. They have produced their own best evidence which was available to them in the form of lease-deeds, vide which CIDCO has transferred the lands to the Companies or individuals for different amounts. They have to be treated as evidence admissible in law and relevant for determining the question in controversy. The potential of the acquired lands is the relevant consideration. The potential has to be determined on the basis of factors available and existing as on the date of issuance of the Notification under Section 4 of the Act. The future potential of the lands *i.e.* what the land price would be after a lapse of one year or more, would hardly be a relevant consideration. The potential cannot be treated as a mere expectation of future, but should be close to reality at site at the time of acquisition of the lands. The potential itself has to be on the basis of the existing evidence which will reflect the potential and scope of development of the area with reference to the surrounding area.

8. We may usefully refer to the principles governing this aspect in the case of *Jas Rath v. Union of India*, 2006 VI AD (Delhi) 284, where a Division Bench of Delhi High Court discussed this aspect at some length, and held as under:-

> "29. Out of the defined criteria for determination of reasonable market value of the land on the date of the notification under Section 4 of the Act, location and potential are the essentials. The potential and location of the acquired land is a material consideration which would weigh with the court while making such final determination. This aspect of acquisition proceedings is not to be seen in isolation but has to be examined in light with other factors. It is a pertinent aspect in this process. Prospective use of land or its future potential by itself is not a relevant consideration as stated by the Supreme Court in the case of *Trilochan Singh v. State of Punjab,* 1995 LACC 283 Supreme Court. But the existing evidence of potential and scope of development of that area with reference to the surrounding areas is a relevant consideration. The court would not be able to ignore the effect of surrounding lands being residentially, commercially or industrially developed. This would be an indication as to what use the land is capable of being put to on the date of its acquisition. Due weightage would have to be given by the Court if the surrounding areas of the acquired lands are fully developed and that too in a planned way. The acquisition being for 'Planned Development of Delhi' and particularly when the acquired lands form part of the whole development plan, it is difficult to say that despite the sale deeds describing it as an agricultural land, its potential would be of no consequence.
>
> 30. The potential of the land would include in its ambit the utility, likely output and its user as residential, commercial or industrial. The potential of the land has to be seen as on the date of the notification but the potential of the surrounding land adjacent to the

acquired land would have some bearing. Potentiality of the acquired land in terms of future may not be very relevant but it must be kept in mind that as on the date of notification do the schemes of development have any provision for acquisition of the land. In the case of *Sarwan Singh and Others v. State of Punjab and Others,* (19975) 1 SCC 284, the Supreme Court while taking a view that post notification sale instances are not very relevant for determination of market value but in regard to the potential and effect of development scheme held as under:-

> '... It is well-known that once a notification for acquisition is published people start upon various speculations and the future potentiality of the land becomes very important and that affects the price of the land sold in the area sought to be acquired or in close proximity to it and this rise in potential value has a definite connection with the issuance of the notification for acquisition of the land. The sale that takes place after the date of a notification under Section 36, as distinct from one under Section 4 of the Acquisition Act, cannot be taken as a reasonable guide for determination of compensation under Section 23 of the Acquisition Act as amended by the Improvement Act. The Tribunal has, therefore, not adopted any unreasonable principles in ignoring the sales that have taken place after the date of notification under Section 36.'

Similar view was also expressed by the Supreme Court in the case of *The Special Land Acquisition Officer, Karnataka Housing Board & Ors. v. P.M. Mallappa & Ors.,* JT 1997 (4) SC 191, wherein the Court held as under:-

> '5. ...The potential value shall be determined for the land existing as on the date of the notification and not after subsequent developments have taken place.'

Signifying the importance of potential factor in determination of the market value, a Division Bench of this Court in the case of *Sh. Prabhu Dayal (deceased by LRs) and others v. Union of India, New Delhi and another,* AIR 1984 DELHI 406, held as under:-

> 'Potentiality is also a true element of the market value. The value of the land has to be determined in its actual condition at the time of expropriation with all its existing advantages and with all its future possibilities. The land in question has potential value as building sites. There is not the slightest reason for not giving to the owner the benefit of potential value.'

31. Future user by itself in terms of judgment of the Supreme Court in the case of *Rajashekar Sankappa Taradandi and Others v. Assistant Commissioner and Land Acquisition Officer and Others,* (1996) 9 SCC 642, may not be of great significance but while determining the market value of the land, potential and location of the land, which would obviously include the effect of surrounding developed areas adjacent to the acquired land as well as declaration of development activities on the acquired land will have to be looked into by the Court.

32. The location of the acquired land is another important aspect. What is the location of the land, it is surrounded by what kind of land, whether there are roads or not and to what use the land could be put as part of the general development of the area would need to be examined by the Court during such proceedings. In the present case, the counsel appearing for the appellants have heavily relied upon the Zonal and Master Plan of 1962. These were the development plans, which have the force of law under the provisions of Delhi Development Act,

notified by the authorities in the year 1962. According to the appellants, the area of Village Rithala was part of low and medium density residential user. In fact the villages and area beyond Rithala were also shown to be a residential area and were part of the larger development scheme of Delhi. They have also relied upon a resolution passed by the DDA on 27th October, 1980 vide which the acquired area of 2497.30 hectares was stated to be taken for development in different stages within 5 years. This scheme was named as 'Rohini Residential Scheme, 1980' and the purpose was to build houses for weaker sections of the society. In the Zonal plan, the area that has been shown to be covered under Block H-7 and H-8 of the Master Plan in the North-West Delhi was the area covered under the resolution of the DDA. The area under Zone H-7 and H-8 is stated to be the area covering villages of Mangolpuri and Rithala. The Master Plan and the Zonal Plan show that the acquired area is part and parcel of larger developed residential scheme floated by the DDA. The plans were notified in 1962 and the resolution was passed in the year 1980 i.e. prior to acquisition of the land.

33. In the resolution itself it has been stated that site has a great advantage of existing Haiderpur Water Treatment Plant and Rithala Sewage Treatment Plant. Under the brochure, applications were invited under the 'Rohini Residential Scheme' for different categories being Janta, LIG and MIG. In this brochure besides providing the terms and conditions for such allotments, it was stated that the applications should be submitted prior to 31st March, 1981. The rates for such allotment were varied from Rs.100 per sq. mtr. to Rs.200 per sq. mtr. In the Map shown in this brochure, the area of revenue estate of Village Rithala has clearly been shown abutting the roads leading from Wazirpur Industrial Area and Ashok Vihar to Nagloi drain. As per legend of brochure, which we have exhibited as Exh. X, the area has been shown to be commercial, industrial, residential and recreational. The area of Rithala Village is covered under the residential user. This brochure Exh. X was issued by the DDA, after the resolution was passed and terms and conditions were finalised, inviting applicants to file their applications by 31st March, 1981. A Map

showing the revenue estate of Village Rithala also shows that the acquired land is surrounded by different villages.

34. Of course, as per the sale deeds placed on record by the parties, the effect of which we will shortly discuss, there is no other evidence led by the claimants to show the user and potential of the land. The result of the above discussion is that the acquired land was an agricultural land but had a great potential. It was to be put to residential scheme as per the plan declared in the year 1962 and the resolution of the authorities passed in the year 1980. The surrounding areas have already been developed and this fact is sufficiently established by the documentary evidence on record of this file. Notifications issued under Section 4 of the Act for acquiring the land in question was for a purpose "Planned development of Delhi". The exact public purpose as stated was for widening of the Nangloi Drain and construction of water sewage treatment plant at Rithala. This acquisition in question, thus, was for completing the development project and was not for the purpose *de hors* the residential scheme. In the resolution describing the location, which ultimately forms part of the brochure, it is described as under:-

> 'F.-LOCATION:
>
> The project AVANTIKA is bounded by G.T. Karnal Railway Line on one side, Mangolpuri Resettlement Colony on second side. Outer Ring Road on the third and 1981 Delhi Urban Limits on the fourth side.
>
> This pocket is largely unacquired, generally flat with some local pits, mostly fertile, approachable by three major roads namely Outer Ring Road with R/W of 60 mt., road connecting Naharpur and Rithala Village with a R/W of 68 Mt., and third road connecting Mangolpur Kalan and Mangolpur Khurd with 30 mt. R/W. Buses are already plying on these roads.'

35.Thus, it can safely be concluded that the land in question had a declared potential and user as residential and its location was near the roads of the developed areas in accordance with Master and Zonal Plans of Delhi."

9. Even in the case of *Amarjit Singh v. U.T. of Chandigarh,* (2000-3) 126 P.L.R. 465, the Court clearly indicated the view that adjacent area would be relevant. Adjacent area being developed or having a larger potential would again be a relevant consideration, but future potential of the land would, *per se*, not be a relevant consideration for a matter which the Court would, *ipso facto*, take as correct while determining the fair market value of the land. Prospective use of the land or its future potential and development by itself was said to be not a relevant consideration for the Court while determining the market value and reliance was also placed on another judgment in the case of *Trilochan Singh v. State of Punjab,* (1995-2) 110 P.L.R. 100.

10. Location and potential of an acquired land are two features of mode of acquisition which go hand-in-hand. The location of a land is the stepping stone for examining the potential of the land. If the location of the land is that it is surrounded by developed area and

has facilities available and is near to the highways, its accessibility is easier, then it is said to be a very located land; and if the surrounding areas are already developed and the acquisition of the land is for some purpose, then obviously, it has great potential as well. At the cost of repetition, we may notice that the lands were initially acquired in the year 1970. The said Notification remained in operation till it was permitted to lapse, in view of the amendment in law, and thereafter, a fresh Notification was issued. During this period, the areas had developed and the warehousing purpose was the specified purpose for acquisition of the lands. CIDCO, in its Development Plan, has stated the area to be residential, which purpose was subsequently modified in the year 1979, and finally, the lands were acquired in the year 1986.

11. The statement of witness no. 1 for the appellants, Karyal Bahuleyan, who himself was a Senior Economist of CIDCO, can be referred to where, in his examination-in-chief, he stated that the Draft Development Plan was prepared by CIDCO in 1975, and was approved in 1979. He further stated that out of the total area designated for the township, about 45% to 60% area is saleable under different uses, and the remaining goes to public utility

services and development. As per the Draft Development Plan, in Kalamboli, the area towards the East of H-4 was earmarked for development of Wholesale Steel and Warehousing Complex to be shifted by CIDCO by shifting the existing whole Steel Trade from Darukhana area of Bombay.

12. Exhibit 15 is the Development Plan as modified up to May, 1992, which shows the location of the acquired lands. In this map, Village Roadpali is shown adjacent to the boundary of Village Kalamboli, and also reflects the Commercial Complex and Warehousing areas. At some distance from the revenue boundaries of Village Roadpali are reflected the M.I.D.C. Industrial Area, Revenue District of Village Padghe. On one side is the road, and on the other side is the highway touching the already acquired lands. The Valuation Report prepared by witness Jeevan Kulkarni also shows the situation of the acquired lands. As per this report, the location is stated to be as under:-

> "The land mentioned above is to the east of Bombay Pune National Highway No. 4 and is to the east of railway line of Central Railway line joining Diwa-Panvel-Apta. The land is plain and it is very close to Kalamboli railway station."

In this report, other land marks and their approximate distances have been shown, including Kalamboli Railway Station, which is 640 Metres (South), M.I.D.C. Industrial Area, Taloja, 640 Metres (North), Bombay Pune Highway, 900 Metres (West), and Roadpali Gaothan, 640 Metres (West). In regard to infrastructure, it has been stated that there is heavy traffic on Pune-Bombay National Highway. It has been stated that water and electricity supplies are available in the village, and there are all chances for future development, and the lands have the potential of residential and industrial areas. The respondents had cross-examined both these witnesses. While cross-examining witness Mr. Karyal Bahuleyan, nothing material came out, and the cross-examination was hardly of any consequence. Thus, it is clear from the above documentary and oral evidence that the lands had potential as on the date of acquisition; and the lands were located amidst the developed area and have various facilities. The lands in question were adjacent to the land of Village Kalamboli. That, of course, does not mean, necessarily, that the Claimants would be entitled to the same value of the land as given in relation to the lands located in Village Kalamboli or the

amount indicted in the lease-deed over some period. It is a settled law that land of an adjoining village is merely indicative of the market value of the acquired land, and it cannot be a universal rule that the same value should be adopted, as granted to the lands located in the adjacent villages.

13. Reference can be made to *Union of India v. Sh. Parbhati and Ors.*, 2006 V AD (Delhi) 115, in which a Division Bench of the Delhi High Court observed as under:-

> "It is a well accepted cannon of law governing the acquisition proceedings that the potential, location, utility of the land would have to be similar before the compensation awarded in the lands of the adjacent villages or adjacent areas can be made the basis for awarding the compensation. While the learned Reference Court rightly relied upon the judgment of the Supreme Court in the case of *Sita Ram v. Union of India,* 79 (1979) DLT 10 (DB), in coming to the conclusion that where there is large scale acquisition of lands in various villages which are adjacent to each other and have the same potential, then the pattern of evaluation the same valuation should be consistently followed by the Court."

14. In *Harpal Singh v. State of Haryana & Ors.*, (1999-1) 121 P.L.R. 774, the Punjab High Court observed:-

"8. ...in a very recent judgment passed by this Court in *State of Haryana v. Jagir Kaur & Ors.*, R.F.A. No. 716 of 1995, pronounced on 24th December, 1998, the Court considered in great detail the amount of compensation payable to the land acquired in Villages Sonda and Jandli, which are adjacent to Patti Mehar. All the awards and instances relied upon in the present cases were also relied upon by the parties to those proceedings and after considering the entire case, the Court held as under:-

> 'The principle of determination of market value of the land by applying the principle of averages of the sale instances proved on record and which are admissible would be a sufficient measure to arrive at a figure which should finally be paid to the claimants. Application of principle of average is nowhere an innovative application, but is a mere reiteration of a well accepted norm and principle which has been approved by the Hon'ble Supreme Court ... This principle was also fully accepted by a Division Bench of this Court in the case of *Khushi Ram and Another v. The State of Haryana, 1988 L.A.C.C. 653.*'

9. Comparable instances of adjacent land in different revenue estates normally should be granted somewhat similar compensation. The concept of awarding uniform compensation has to be applied subject to its own limitations. A reference to the guiding principles in this regard, at this stage, would be appropriate. The application of principle of averages can be construed to be a proper safeguard against the inflated sale instances. The computation of fair market value, thus, has to be made keeping in view the above stated twin principles. At this stage, reference to a judgment indicating these principles would be appropriate. In the case of *Union of India v. Dr. Balbir Singh,* R.F.A. 2382 of 1997, decided on 10th December, 1998, the Court held as under:-

'...

> The land of average would be fairly applicable in the circumstances because the value of the land even as per sale deeds above mentioned have been fluctuating towards degrees by a considerable margin during the period for which the sale deeds have been produced. In the case of *Khushi Ram & Anr.* (supra), it was considered by a Division Bench of this Court to apply the principles of average to reach at a fair conclusion.'

10. The instances of sale proved by the claimants relate to their saleable pieces of land and indicate considerably a higher value of the land. Such value cannot form a comprehensive base for determination of a definite market value of the acquired land at the relevant date. In other words, the Court must take recourse to an equitable balance between the two extremes and such balances must not be founded only on a guess work, but apparently should have an acceptable rationale or reason behind it. The principle that the highest value of the land emerging from the sale instances should be fixed at the market value of the acquired land, was rejected by the Hon'ble Supreme Court of India in the case of *Gulzara Singh & Ors., etc. v. State of Punjab & Ors.,* 1993 L.A.C.C. page 612. In this very judgment, the Hon'ble Court further held that the belting system would again be not appropriate method of computation and it must be better to base on the principle of average price. It could be relevant at this stage to refer to the following observations of the Hon'ble Apex Court:-

> 'That highest value should be fixed cannot be accepted in view of the consistent later view of this Court. In the case of *Collector of Lakhimpur v. Bhuban Chandra Dutta*, A.I.R. 1971 S.C. 2015, this Court accepted the principle of average, but, however, rejected the small extent of the lands and enhancement based on the average at Rs.15,000/- per *Bigha* was reduced to Rs.10,000/- per *Bigha*. This Court also noted that large extent of land in the developed Aurangabad Town was acquired for Medical College, accepted the principle of average worked out by the Reference Court, valuing between Rs.2.25/- to Rs.5.00 per sq. yard and this Court ultimately fixed the market value at the rate of Rs.1.50/- per sq. yd. ...this Court upheld rejection of some plots of land and accepted two sale deeds of large extent working out the average rate of Rs.500/- per Decimal and ultimately Reference Court fixed the market value at the rate of Rs.200/- per Decimal. It is, therefore, clear that the Court in the first instance has to determine as to which of the sale deeds are relevant, proximate in point of time and over comparable base to determine market value. Therefore, the over all price has to be worked out. It would be seen that this Court has taken consistent view of working out average and further deductions have been made in fixing just and fair market value when large chunk of the land was acquired. We respectfully add and adhere to the principle and we find no compelling reason to divert the stream or arrest the consistence.'

While enunciating this principle the Hon'ble Supreme Court quoted with approval the case of the *Collector of Lakhimpur* (supra).

The principle referred by this Court in the case of *Khushi Ram* (supra) was also made applicable by a Division Bench of this Court in the case of *Surinder Singh v. Punjab State* (1985-1) 109 P.L.R. 533. A Division Bench of High Court of Delhi in the case of *Ram Mehra v. Union of India,* A.I.R. 1987 Delhi 130, also stressed the need for application of these principles for determination of fair market value of the acquired land.

11. In a very recent judgment, the Hon'ble Supreme Court of India, in the case of *Kanwar Singh and Others v. Union of India,* J.T. 1978(7) S.C. 397, observed that Courts while applying the market value of the land in the adjacent villages or revenue estates must not for example follow the same factors as it is not necessary that compensation granted in adjacent villages would thus be a deciding factor for other lands. The Supreme Court also applied the principle of averages to get the correct market value of the acquired land on the same element of conjectures and opinion in the case of *Krishna Yachendra Bahadurvaru v. the Special Land Acquisition Officer, City improvement Trust Board, Bangalore & Ors*., A.I.R. 1979 S.C. 869.

12. In the case of *Purappa Ranshiya v. Special Deputy Collector, Land Acquisition,* A.I.R. 1982 S.C. 77, the Hon'ble Apex Court granted uniform compensation on the basis that earlier for somewhat similar land which was acquired under the same notification, higher amount of compensation was awarded..."

15. The documentary and oral evidence led by the Claimants exhibits the location and potential of the lands in question. It is true that the acquired lands cannot always be equated in terms of

value or otherwise to an adjacent land. The surrounding areas of the acquired lands have been developed, and to that extent, the Claimants would have to be given the benefit. The lands of Kalamboli were developed at the time of acquisition.

16. While determining the market value of the acquired lands, the learned Reference Court has referred to the evidence, and while applying the Belting System, has granted different rates of compensation to the acquired lands in the same village. The basis of such differentiation is nearness to the highway. In the impugned judgment, the Court has categorised the lands involved in all the References, and determined them with reference to the distance of 50 metres, and 300 to 500 metres from the Steel Market, and thus, differentiation has further been particularly made in relation to L.A.R. No. 138 of 1990, which lands are stated to be closer to the Steel Market and is closer to two industrial estates. The said lands, in the opinion of the Court, were having great potential and, therefore, the Claimants were given the highest market value of Rs.230/- per square metre.

17. Before we express our opinion as to the correctness of the determination of the market value of the lands at the time of acquisition, we may consider the ancillary question arising from the reasoning of the Reference Court. The Court has given different values to the owners of the lands varying from Rs.200/- to Rs.230/- per square metre. While applying the Belting System with reference to its proximity to the industrial estate, this differentiation in value was given. The lands, subject-matter of LAR No.138 of 1990, which were closer to the Steel Market, were given the highest rate of compensation. Firstly, it needs to be examined whether in the facts of the case, it was necessary for the Court to apply the Belting System, and that, too, in small fragmentation of 500 metres. In a developing area, such a small distance can hardly matter unless and until the differentiation in the market value was primarily based on other circumstances or reasons like the land was closer to national highway or State highway, while other lands were farther away from the national highway. Similarly, the lands in immediate proximity to the

industrial, developed area can be treated as a class different from a class of other lands which were away from such industrial, developed area; but it is difficult for us to hold that every 500 metres or 300 metres there should have been differentiation of value of lands. In the case of *Union of India vs Dera Baba Ram Dasji*, 1999(2) P.L.R. 681, the Court discussed the law in relation to application of Belting System, stated that it necessarily was not the perfect system to be applied for determination of market value of the land; and the Court held as under:

> "The resultant effect is that there is hardly any material evidence which could have direct bearing on the value of the land in question for deciding the fair market value of land in question. But it would also not be fair at this stage that after lapse of about 11 years the parties should be sent back to the learned Additional District Judge to a fresh trial. The court could safely rely upon the award of the Collector as well as the findings recorded by the learned Additional District Judge *de hors* the aforesaid two questions. I am unable to see any merit in the contention raised on behalf of the Union of India that belting system ought to have been followed by the learned Additional District Judge."

18. It is not necessary to bisect a parcel of land acquired in the manner as has been done by the learned Reference Court as it could not be a fair determination of the market value of the acquired lands at the relevant time. The lands which are abutting the main road would normally fetch higher rate of compensation as the accessibility of such lands is better and there is common tendency to buy lands near developed area and more particularly lands which are located abutting main road or national highway. In the case of *Manohar Lal and ors vs. Haryana State and ors.*, 2001(1) Indian Civil Cases 402, the Court took the following view:-

> "It was vehemently argued by learned counsel for the claimants that the acquired land is surrounded by developed areas, is abutting the State Highway/main roads and is within the municipal limits, as such the land abutting the roads should be granted higher compensation. Keeping in view the principles of law settled by the Hon'ble Supreme Court in the case of *Basant Kaur and ors. v. Union of India*, 1997 LACC 17, I consider it appropriate to grant different compensation to the claimants whose lands are contiguous to and are adjoining the main roads. The lands which are located within 100 meters (beyond the land falling under the scheduled roads area) of the main roads metal led Kaithal Kurukshetra, new bye-pass and Kaithal

Karnal roads, would be granted higher compensation their lands being termed as group A lands. While, all other lands would be categorized as group B lands. It is clear from the record that the lands were acquired for common purpose namely, development of sector 19 Part II and Part III of Kaithal town, vide notification of the same date. Thus, to divide the lands on sector basis will not be reasonable or fair. It is a known fact that the lands which abut the main roads or the State highways fetch a higher price than the lands which are inside even in the developed area. Another factor which has weighed with the court in granting different compensation to the claimants of group B lands is that major part of the lands for Sector 19 Part III abuts the railway line as well as the minor canal in sector 19 Part II. The lands which are away from the Highway or the main roads, thus, cannot command the same price. Various sale deeds produced on record, though may not be admissible otherwise also indicate different value in various part of the acquired land or the lands adjacent thereto. By applying the principles of permissible and reasonable guess work, the lands falling in group B would receive compensation at the rate of Rs.20,000 less than the one awarded to group A land i.e. Rs.1,83,478 per acre."

19. Similar view was also taken in the case of *Dhanpat Rai vs Grampanchayat Village Lakhno Tehsil Anandpur Saheb District Rupnagar,* 2000(1) P.L.R. 832. In that judgment a reference was also made to a judgment of the Apex Court in the case of *State of Haryana and ors. v. Mehar Chand* - Special Leave Petition (Civil) No.14371 of 1998.

20. Now the Court has to draw the balance between the lands which are adjacent to the industrial area or market area which are developed or under development and the land abutting the national highway or State highway on the one hand and the lands which are located farther away than those areas. Making too many small segments of land would, in our opinion, result in awarding of compensation which may not be fair to all the claimants. We would prefer to divide the lands into two sections i.e the lands which are located at a very close distance to the industrial area/steel market as well as national highway will form one block while the lands beyond 500 meters from these two marked points would form the other block. The claimants of both these blocks would be entitled to different compensation.

21. The court would have to apply the principle of guess work which is permissible in law, particularly keeping in mind the fact that there are no direct sale instances available on

record of the acquired lands or adjacent villages. Thus, the Court would have to essentially apply some guess work to determine the fair market value of the lands. In the case of *Risal Singh and ors. (Sh) vs Union of India and anr.* reported in 2006(VII) AD(Delhi) 665, the Court has taken a view on the above principle and held as under:

> "In so far as the rejection of sale deeds Ex PW1/1 & Ex.PW2/1(Ex PW1/3) by the learned Reference Court is concerned, we can hardly find any fault in the impugned judgment. But there could be no reason before the reference court for not relying upon Ex. PW1/2 which related to a sale transaction of village Bamnoli and was sale of a reasonably large piece of land admeasuring about 3 bigas 15 biswas. The reasoning given by the learned reference court for rejecting this evidence is not sustainable in law. The best method of computing the compensation payable to the claimants is the sale instances relating to the land in question. A willing buyer and a willing seller would offer what price of the land at the time of acquisition or immediately thereto would be a definite guide for determining the fair market value of the land on the date of the notification. Once such an evidence is available on record, there is hardly any need for the court to advert itself to any other method of computation. This principle was clearly stated by the Supreme court in case of *ONGC Ltd vs Sendhabhai Vastram Patel and others* 2005(VII)AD (SC) 126 = (2005) 6 SCC 454. The Supreme Court ... also clearly stated that the court has to apply some kind of guess work in computing the compensation payable to the

claimants for acquisition of their respective lands. It may not be always possible to grant compensation arithmetically correct to the decimals. The counsel appearing for the claimants referred to various judgments of this court wherein for acquisition of land in village Bamnoli or other surrounding villages during the year 1982-86, compensation was awarded by the court for acquisition of the agricultural land @ Rs.21,000 per bigha to Rs.47,000 per bigha and even more and submitted that in the present case, they would be entitled to get compensation @ Rs 70,000 per bigha at least. They claim enhancement even on Ex.PW1/2 as it is stated to be a sale deed more than six months prior to the date of acquisition. We have already noticed that the reference court could not have outrightly rejected Ex PW1/2 as it was a sale instance of a reasonably large piece of land and the sale transaction had been executed more than six months prior to the date of notification. There was no reason for the court and in fact no evidence had been led that the transaction Ex PW1/2 was a sham transaction and its genuineness was doubted for any reason whatsoever. The judgments of this court in RFA 565/99 and 481/99 are a merely guiding factor and cannot be taken as a determinative basis in regard to fixation of compensation payable to the claimants. These awards and judgments relate to different villages which may be adjacent but once the sale deed of the same village is available, we find that it would be unnecessary to travel into this controversy".
(emphasis supplied)

Reference can also be made to the case in *Jas Rath vs Union of India,* 2006(VII) A.D. Delhi 284, in this regard.

22. Where the Court has to make an award, the Court has to examine the case to achieve ends of judicious fairness, and reliance upon certain guess work was equally settled principles of law. The law that deduction from the sale consideration / allotment price / premium / letter of allotment even in leasehold properties has to be made for developed areas. From the consideration deduction can vary keeping in view the facts and circumstances of the case right from 20% to even 70%. Firstly, it would be on account of comparative value of the developed area and undeveloped area. For development of that area deduction of rate for roads and other utility services have to be cumulatively applied before the Court can determine the market value of the acquired land. Further reference can be made to the decisions in *Union of India vs. Dr. Balbir Singh,* 1999(3) PLR 613, *Smt. Bindu Garg vs State of Haryana,* 1999(2) PIL 794, *Dhanpal Rai vs Grampanchayat Village Lakhno Tehsil Anandpur Saheb District Rupnagar and ors.,* 2000(1) PLR 830, and *Risal Singh and ors. vs Union of India and anr.,* 2006(VII) AD Delhi

665. In the case of *Dhanpal Rai* (supra), the Court held as under:

> "The only evidence which can help the court in computing fair market value of the land in question would be Exhibit P.38 and Exhibit P 39. The details of Exhibit P 38 and Exhibit P 39 which were sold in the year 1982 -1986, which shows the increase in the value of the land, certainly also indicates an apparent fact that the land sold is quite small. The property of each claimant which has been acquired vide notification in question is also small pieces of land, though totaling an area of 4653 square yards, was acquired for the construction of two lane bridge. Average of P 38 and P 39 comes to Rs.3500 per square yard. Keeping in view the fact that the lands in small portions were acquired for a much beneficial public purpose, namely construction of over bridge crossing and the fact that the sale instances were again between the same parties, would normally indicate a higher value of the land than the market value. Further more, the land sold under these Exhibits is of very small pieces nearly 10 square yards or so. For the variety of reasons stated by the Hon'ble Supreme Court in the case of *K.S. Shivadevamma and ors. vs. Assistant Commissioner and Land Acquisition Officer and anr.*, 1996(2) SCC 62, it is necessary for the court to apply the some reasonable element of deduction.
>
> The above grounds in addition to the fact that the area for the acquired purposes is to be developed by heavy costs to be incurred by the State and the fact that the development itself would be ultimately beneficial to the public at large, detailed reasons have been given by this court in RFA No. 4294 of 1990 title *State of Haryana vs Meena Dua* (2000-1)

124 PLR 9, decided on 27.5.1999 for the necessity to apply the principle of deduction to such case. The consistent view taken by the Hon'ble Apex Court in its various judgments which have been relied upon in those cases is that deduction in such cases is an essential feature for determination of the amount payable to the claimants.

Therefore, I am of the considered view that the present case is a fit case where deduction of at least 53% should be applied. Such extent of deduction was applied by the Hon'ble Supreme Court in the case of *K.S. Shivadevamma* (supra). I fail to understand as to why the learned District Judge had not applied the principle of deduction to the facts of the present case. Computing on the aforesaid basis the compensation payable to the claimants would be at the rate of Rs.1045 per square yard (Rs 5500 x 53 = 1855) 3500 - 1855 = Rs.1645.00). Consequently the claimants would be entitled to compensation of Rs.1065 per square yard with all statutory benefits under sections 23(1A), 23(2) and 28 of the Act".

23. Thus, in view of the above stated principle, we have to make substantial deduction from the price that we determine with particular reference to the facts of the present case. Certain areas have been developed. Even the purpose for which the lands were acquired had potential, but it does not mean that at the time of acquisition, the same could be compared to a developed area or an area which was totally

commercial and was capable of fetching much higher price than that a willing purchaser would buy in relation to the acquired lands. We have also held that we cannot blame the parties and particularly the claimants that they have not produced and proved any sale-deeds on record. There were no sale-deeds executed right from 1970 to 1984 and it was only already developed land which was given on perpetual lease by the authorities / Corporation for commercial or other purpose. Mainly, three instances are available on record which have been proved in accordance with law and have to be considered for determining the fair market value of the lands. First instance is an allotment letter dated 16th October 1984 vide which an area of 420 square metres being plot No. 413 at Kalamboli, Navi Mumbai, was allotted on 60 years' lease for total premium of Rs.7,06,777. This instance was proved by the witness No.1 Shrikrishna, who stated and who gave rate of the plot at Rs.1873.28 per square metre. The letter of allotment showed that water and power supplies were available; and charges were to be paid directly by the

allottee to the authorities concerned. Another witness Karyal, on behalf of the Claimants, also made a reference to this instance; and also stated that CIDCO had developed wholesale steel market in the year 1980 by planning an area of 305 hectares. In his statement he has further stated that in regard to the sale to Anusuya for the purpose of petrol pump the land was leased out by way of tender; and it was at the rate of Rs. 240 per square meter. The other instance is a lease-deed dated 2nd May, 1986 which was proved and placed on record. In the submission of this witness, the instance was, where the plot in question was given at a premium of Rs.345.87 per square metre; and this was with regard to the plot admeasuring 2250.24 square metre. Still another instance which was proved by the Claimants is with regard to the plot which was admeasuring 1466 square meters given for a weigh bridge at the rate of Rs.2727 per square metre.

24.All the above instances relate to village Kalamboli. From Exhibit 15, the map, it is clear that the location of these lands is nearer to the highway and is part of the already developed area, i.e., steel market or industrial area. Certainly, the lands in question are neither developed to that extent nor entire lands abut the national highway. The instances that have been referred to by the acquiring authority related to the lands which are much farther away from the acquired lands and the developed area. The respondents did not lead any evidence before the learned reference Court, and only relied upon the record of the acquiring authority. On the basis of the instances proved by the Claimants, it is clear that there has been an increasing trend in the values of the lands surrounding the acquired lands; but that itself would not entitle the Claimants for the same compensation for which the property was leased out or leasehold rights were created by the Corporation. These lands were given after they were fully developed where commercial development had taken place, water and electricity were available, roads and other essential

amenities were duly provided for and that all would form part of the costs of development, which have to be deducted from the compensation to be given to the claimants. The Court would also have to consider that in the award in LAR No.172 of 1996, the learned reference Court had awarded R.90 per square metre in the year 1977. The lands in question were acquired 7 years later i.e. in the year 1984. Merely three instances referred to by the Claimants as well as a petrol pump instance can hardly form the basis for determination of the compensation. Since we have found that the instances referred to are of the lands which are fully developed they cannot be taken into consideration and therefore, we have taken the average of two instances referred to in paragraph 23 above; and have computed the amount of compensation by deducting 25%. That is how the compensation has been worked out by us at the rate of Rs.1725/- per square metre with statutory benefits as contemplated under Sections 23 and 23(1A) of the Land Acquisition Act.

25.In the result, the Appeals are dismissed. Consequently, the Cross Objections are partly allowed. All Civil Applications stand disposed of. No order as to costs.

CHIEF JUSTICE

S.C. DHARMADHIKARI, J.